

## **MITEK'S SUBSTITUTE EXHIBIT 6**

**(in support of DePuy Mitek's Memorandum in Opposition  
to Arthrex's Motion for Summary Judgment)**

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MASSACHUSETTS

DEPUY MITEK, INC., a )  
Massachusetts corporation, )  
Plaintiff, ) Civil Action  
vs. ) 04-12457 PBS  
ARTHREX, INC., a Delaware )  
corporation, )  
Defendant. )

- - - - -  
The deposition of DEBI PRASAD

MUKHERJEE was taken on Tuesday, June 13,  
2006, commencing at 9:08 a.m., at the  
offices of Dickstein Shapiro Morin &  
Oshinsky LLP, 2101 L Street, N.W.,  
Washington, D.C., before Susanne Bergling,  
Registered Merit Reporter and Notary Public.

<p style="text-align: right;">182</p> <p>1 Q. Okay. Do you understand this is the 2 prosecution history of a -- of an Arthrex patent, 3 right? 4 A. Yes, that's what it says. 5 Q. Okay. If you would turn to DMI 41091. 6 A. 41091, yes. 7 Q. Okay. At the top paragraph, do you see it 8 says, "The suture of Example 7 of Chesterfield, et 9 al., '575, uses a Spectra 1000 core surrounded by 10 a hollow sheath --" I'm sorry, "a hollow braided 11 sheath made of a single type of yarn"? 12 Do you see that? 13 A. No, where are you, starting in the middle? 14 Q. Right here. Right here, first paragraph. 15 A. First paragraph. 16 Q. This says -- 17 A. Suture Example 7, is that what you're 18 reading from? 19 Q. Yes, the suture -- 20 A. Okay. 21 Q. Do you see that? 22 A. Yes, I see it. 23 Q. It says, "The suture of Example 7 of 24 Chesterfield, et al., '575, uses a Spectra 1000 25 core surrounded by a hollow braided sheath made of</p>	<p style="text-align: right;">184</p> <p>1 A. Yes. 2 Q. It goes on, it says, "comprising looping a 3 flexible elongated member about the body tissue." 4 Do you see that? 5 A. Um-hum. 6 Q. Okay. What significance do you give to the 7 meaning of going "about" the body tissue? What 8 does that mean? 9 A. It -- 10 MR. TAMBURRO: Objection, vague. 11 THE WITNESS: "About the body tissue" is 12 kind of funny language. Through the tissue, 13 that's what it normally will do to produce -- 14 BY MR. BONELLA: 15 Q. You mean going through the tissue? 16 A. That's what I would think. 17 Q. Okay. 18 A. Whether soft or hard, doesn't matter. 19 Q. Do you think the -- where the claim says 20 "looping a flexible elongated member about the 21 body tissue," do you think that FiberWire is used 22 in going about body tissue as that's used in the 23 claim? 24 A. You're asking about FiberWire? 25 Q. Yes.</p>
<p style="text-align: right;">183</p> <p>1 a single type of yarn." 2 Do you see that? 3 A. Um-hum. 4 Q. Do you agree with that statement? 5 A. Yeah. 6 Q. Okay. And then if you go down later in the 7 third paragraph -- 8 A. Third paragraph, yeah. 9 Q. -- it says, the second sentence says, "As 10 noted above, Chesterfield, et al., '575, does not 11 disclose an example of a braided sheath that 12 includes a blend of both -- of both ultra high 13 molecular weight polyethylene and polyester." 14 Do you see that? 15 A. Yes. 16 Q. Do you agree with that statement? 17 A. Yes. 18 Q. Okay. When you were referring to the 19 claims of the '575 patent -- I'd like to turn to 20 those now. 21 A. Are you done with this or -- 22 Q. Yes. 23 A. Number 4, the '575. 24 Q. It claims that it's a method for repairing 25 split portions of body tissue. Do you see that?</p>	<p style="text-align: right;">185</p> <p>1 MR. TAMBURRO: Objection, vague, and he's 2 not an expert on how FiberWire is used in surgery. 3 THE WITNESS: Again, I may not know what's 4 in surgery, but I have myself used in meniscal 5 repair with a surgeon through the body tissue. 6 BY MR. BONELLA: 7 Q. Okay. So, is FiberWire -- to the extent 8 you know, if FiberWire is used in surgery, is it 9 used to go about body tissue? 10 A. To attach something, yes. 11 Q. It is? Okay. Would that be a pretty 12 standard understanding? 13 A. I don't know what is standard. It's new 14 suture, so nobody might not know that it's 15 available. It cannot be standard. 16 Q. Well, no, not the FiberWire. Are 17 sutures -- 18 A. You asked me for FiberWire first, then you 19 changed -- 20 Q. The use of FiberWire, not the construction, 21 how it's used. 22 A. Yeah. 23 Q. FiberWire, is it your understanding that 24 it's normally used to go about body tissue? 25 MR. TAMBURRO: Objection, vague, and he's</p>

<p style="text-align: right;">214</p> <p>1 A. Yeah.</p> <p>2 Q. And then there's also one from John</p> <p>3 Schmieding to Steve Soffen? Right here</p> <p>4 (indicating).</p> <p>5 A. Oh, yeah, okay.</p> <p>6 Q. December 4th, 2003.</p> <p>7 A. Okay.</p> <p>8 Q. So, the -- and do you see how it's a</p> <p>9 discussion of the '688 patent in the email?</p> <p>10 A. You're talking about the '688 patent here,</p> <p>11 yes.</p> <p>12 Q. Is discussed, right?</p> <p>13 A. Is discussed, yeah.</p> <p>14 Q. Okay. So, it's December 4th, 2003.</p> <p>15 A. Right.</p> <p>16 Q. And then if you go to Exhibit 209, it's</p> <p>17 December 23rd, 2003.</p> <p>18 A. Right.</p> <p>19 Q. So, it's a -- so, the Exhibit 209 was about</p> <p>20 a week and a half after -- or I'm sorry, about --</p> <p>21 Exhibit 209 was about three weeks after Exhibit</p> <p>22 198.</p> <p>23 Do you see that?</p> <p>24 A. Okay.</p> <p>25 Q. Exhibit 209, if you look at the bottom on</p>	<p style="text-align: right;">216</p> <p>1 A. No, I don't -- I don't want to know.</p> <p>2 Q. You don't want to know?</p> <p>3 A. Yeah.</p> <p>4 Q. Okay. And do you see where he also</p> <p>5 references the Chesterfield patent there?</p> <p>6 A. Yes.</p> <p>7 Q. But he -- Mr. Soffen said he had not yet</p> <p>8 found knock-out prior art. Do you see that?</p> <p>9 A. He says that, yeah.</p> <p>10 Q. Did -- did anyone tell you why Mr. Soffen</p> <p>11 said he did not find knock-out prior art even</p> <p>12 though he was aware of the Chesterfield patent?</p> <p>13 A. No.</p> <p>14 Q. Okay. Would you like to know why?</p> <p>15 A. No.</p> <p>16 Q. Would it affect your opinion if Arthrex</p> <p>17 believed that they had not found knock-out prior</p> <p>18 art even though they were aware of both the</p> <p>19 Chesterfield patent and the '688 patent?</p> <p>20 A. What's the question?</p> <p>21 Q. Would it affect your opinions at all if</p> <p>22 Arthrex believed that it had not found knock-out</p> <p>23 prior art even though it was aware of the '688</p> <p>24 patent and the Chesterfield patent?</p> <p>25 A. No.</p>
<p style="text-align: right;">215</p> <p>1 Exhibit 209 --</p> <p>2 A. Yeah.</p> <p>3 Q. -- the last paragraph, do you see it's an</p> <p>4 email from Steve Soffen to John Schmieding?</p> <p>5 A. Yeah.</p> <p>6 Q. Okay, and the last paragraph says, "An</p> <p>7 assertion of non-infringement is always more</p> <p>8 palatable than an assertion of invalidity." Then</p> <p>9 he says, "Since we have not yet found 'knock-out'</p> <p>10 prior art, my inclination is to respond to Ethicon</p> <p>11 with the above if Ethicon provides evidence</p> <p>12 pre-dating Chesterfield."</p> <p>13 Do you see that?</p> <p>14 A. Yeah.</p> <p>15 Q. Okay. Did you consider, in forming your</p> <p>16 opinions, that Mr. Soffen had said that he had not</p> <p>17 yet found knock-out prior art in December of 2003</p> <p>18 but at that time was aware of the '688 patent?</p> <p>19 A. No, because I don't even know this thing at</p> <p>20 that time frame, 2003.</p> <p>21 Q. You didn't consider that?</p> <p>22 A. No, because I -- I didn't get this thing.</p> <p>23 Q. Would you like to know why Mr. Soffen</p> <p>24 didn't think he had found knock-out prior art as</p> <p>25 of December --</p>	<p style="text-align: right;">217</p> <p>1 Q. It wouldn't?</p> <p>2 A. It does not.</p> <p>3 Q. Okay. I'd like to talk about braiding for</p> <p>4 a minute. You're familiar with braiding machines?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. And you're familiar with the term</p> <p>7 "sheath" and "core"?</p> <p>8 A. Yes.</p> <p>9 Q. And a suture or sheath generally goes</p> <p>10 around a core?</p> <p>11 A. Around the core, yes.</p> <p>12 Q. Okay. And would you refer to a sheath/core</p> <p>13 arrangement as a braided construction?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. And a sheath material -- if the</p> <p>16 sheath materials are different than the core</p> <p>17 material --</p> <p>18 A. Not necessarily.</p> <p>19 Q. No, I didn't say necessarily. I didn't</p> <p>20 even ask a question.</p> <p>21 A. Oh, you didn't ask a question?</p> <p>22 Q. Let me ask a question.</p> <p>23 If the sheath materials --</p> <p>24 A. Yeah.</p> <p>25 Q. -- are different -- I'm sorry, if there</p>

<p style="text-align: right;">218</p> <p>1 are -- let me rephrase the question.  2 If there are different materials in the  3 sheath material --  4 A. Different material in the sheath material?  5 Q. In the sheath.  6 A. Okay.  7 Q. -- and one of the materials in the sheath  8 is the same as the core, would you refer to that  9 or would one of ordinary skill in the art refer to  10 that as a braided construction?  11 MR. TAMBURIO: Objection, vague.  12 THE WITNESS: Yeah, if they are braided.  13 BY MR. BONELLA:  14 Q. Okay. If the sheath material is all one  15 type of material and the core material is another  16 type of material, would one of ordinary skill in  17 the art refer to that as a braided construction?  18 A. If they are braided, yes.  19 Q. If the sheath is braided?  20 A. The sheath is braided to the core, then --  21 Q. The sheath is braided about the core?  22 A. Yeah, um-hum.  23 Q. So, if the sheath is braided about the core  24 and the sheath is all one type of material and the  25 core is all another type of material, would one of</p>	<p style="text-align: right;">220</p> <p>1 A. Yes.  2 Q. Okay. Now, the Burgess reference doesn't  3 describe knot strength, right?  4 A. Except there is a -- some reference here on  5 the page 2 where, very last line, they are saying,  6 "In very cold conditions, such as fishing through  7 holes in ice, water having worked its way into the  8 braid will freeze and impart a brittleness that  9 can lead to breakage."  10 Now, whether this is straight breakage or  11 loop breakage, it is not clear, but there is some  12 reference there.  13 Q. Is there any other thing that could  14 potentially be a reference to knot strength in the  15 Burgess reference?  16 A. No.  17 Q. And doesn't the Burgess reference describe  18 how to solve that problem by putting a  19 polyurethane coating, the reference you talk  20 about -- the problem about water getting in and  21 breaking, put it -- I'm sorry, let me rephrase  22 that question.  23 Doesn't the Burgess reference describe how  24 to solve the problem of water getting into the  25 braid and freezing and breaking by putting a</p>
<p style="text-align: right;">219</p> <p>1 ordinary skill in the art refer to that as a  2 braided construction?  3 A. Yeah.  4 Q. And would one of ordinary skill in the art  5 refer to that as a braided construction between  6 1988 and 1992?  7 A. Yes.  8 Q. In analyzing the prior art, did you  9 consider in your opinions whether the prior art  10 taught one of ordinary skill in the art how to  11 make and use whatever was described in the prior  12 art references without undue experimentation?  13 MR. TAMBURIO: Objection, vague.  14 THE WITNESS: No, but the idea comes from  15 this prior art, then you improvise or use other  16 means to get there.  17 BY MR. BONELLA:  18 Q. I'd like to turn to the Burgess reference.  19 A. Which -- which report?  20 Q. It's Exhibit 5, I believe, to your first  21 report.  22 A. First report, 239.  23 Q. 239.  24 A. Okay.  25 Q. Do you recall the Burgess reference?</p>	<p style="text-align: right;">221</p> <p>1 polyurethane coating on the braid?  2 A. I think they also talk about two kinds of  3 filaments, high tensile polyurethane thread and  4 another filament being a polyester and a nylon.  5 Q. Right, but see where it says --  6 A. It doesn't say --  7 Q. (Indicating), page 2, it says, "The braid  8 may be coated with a thin, supple and smooth  9 sheath of polyurethane and this may be carried out  10 by a simple immersion process in liquid  11 polyurethane. It will alter the characteristics  12 (such as buoyancy and strength) in a predictable  13 matter, but its main purpose is to prevent  14 saturation of the interstices of the braid. In  15 very cold conditions, such as fishing through  16 holes in ice, water having worked its way into the  17 braid will freeze and impart a brittleness that  18 can lead to breakage."  19 Do you see that?  20 A. No, I read it, that it is -- he is talking  21 about in general, buoyancy and strength, they are  22 two properties.  23 Q. Right.  24 A. And the -- they say one of the ways -- I  25 don't read this that it solves that problem with</p>

<p style="text-align: right;">238</p> <p>1 A. Then polypropylene is twice, polyester is  2 about twice -- I mean polyester -- polyethylene is  3 twice, then -- ultra high molecular weight  4 polyethylene is twice than polypropylene and twice  5 than polyester, so they are probably significantly  6 higher for the ultra high molecular weight  7 polyethylene, knot pull strength.  8 Q. Do you know if -- does he provide the  9 standard deviation for the knot pull strength?  10 A. He didn't, but just looking at the figures,  11 I mean, I can say that, looking at 1.35 or 1.44,  12 you have to say that.  13 Q. Okay. So, he did not provide standard  14 deviation in this chart.  15 A. Not in this chart.  16 Q. Now, for the knot configuration four equals  17 one equals one, do you see that?  18 A. Yes.  19 Q. The polyethylene failed at 0.35  20 gigapascals, which is lower than the failure value  21 for the nylon, polypropylene and polyester for the  22 four equals one equals one configuration, right?  23 A. Yes.  24 Q. Okay. And that's because the polyethylene  25 slipped, right?</p>	<p style="text-align: right;">240</p> <p>1 Q. And nylon is less lubricious than  2 polypropylene and polyethylene, right?  3 A. Probably.  4 Q. Okay. Now, in that chart, do you see how  5 going across there's different knot  6 configurations, two equals two, three equals two  7 equals one, four equals one equals one, four  8 equals four and four equals four equals four?  9 A. Yes.  10 Q. So, going from left to right, two equals  11 two to four equals four equals four, the two  12 equals two is a simpler knot than the four equals  13 four equals four, right?  14 A. It's not simple or complex. It depends on  15 what the surgeon wants to do. So, he can put more  16 knots to make sure, and in general, they do. They  17 will not stop at two by two. They will probably  18 go to four by four by four to make sure it is  19 there, especially ophthalmic use.  20 Q. Okay. And if you turn to page ARM 25137 --  21 A. Thirty-seven, yeah.  22 Q. Okay, of Cohan, the last paragraph of the  23 first column --  24 A. Yeah.  25 Q. -- do you see the sentence beginning</p>
<p style="text-align: right;">239</p> <p>1 A. I don't use the word "sucked."  2 Q. I said "slipped."  3 A. Slipped, okay. I thought I heard...  4 sorry.  5 Q. So, the polyethylene failed at the 0.35  6 gigapascal level for the four equals one equals  7 one configuration because of the polyethylene  8 slipping, right?  9 A. Right.  10 Q. Okay. Polyethylene, including ultra high  11 molecular weight polyethylene, is a lubricious  12 material, right?  13 A. Yes.  14 Q. Okay.  15 A. It's also polypropylene -- excuse me.  16 Q. Sure.  17 A. Polypropylene is also a lubricious  18 material.  19 Q. It is?  20 A. Yes, it is.  21 Q. Okay. How about nylon or polyester, are  22 they lubricious?  23 A. Nylon is also -- again, is lubricious.  24 Q. How about polyester?  25 A. Polyester will be less.</p>	<p style="text-align: right;">241</p> <p>1 "Although"? The first column --  2 A. Did you say first column?  3 Q. First column, last paragraph.  4 A. Last paragraph.  5 Q. The sentence beginning, "Although."  6 A. "Although," yes.  7 Q. Cohan states, "Although laboratory testing  8 showed that the polyethylene fiber has a somewhat  9 lower knot holding strength with simpler knots  10 than the other three polymers, more complex knots  11 than are commonly used would realize  12 polyethylene's great knot pull strength."  13 Do you see that?  14 A. Yes.  15 Q. Okay. So, Cohan was calling the more --  16 the additional knot configurations more complex,  17 right?  18 A. That's what -- if he meant by that.  19 Q. Well, did you understand that's what he  20 means when you read this reference?  21 A. Well, I -- I think that normally for a  22 surgeon, they will put as many knots they can to  23 make sure it's secure, and it's nothing complex or  24 simple about it.  25 Q. Well, if you look at the author, the author</p>



<p style="text-align: right;">294</p> <p>1 in the monomer?</p> <p>2 A. Yeah -- well, it's not a monomer, in the</p> <p>3 polymer.</p> <p>4 Q. In the polymer?</p> <p>5 A. Yeah.</p> <p>6 Q. I'm confused. Are you saying that the</p> <p>7 monomer unit in all types of polyethylene is the</p> <p>8 same or different?</p> <p>9 A. Mostly same, yeah.</p> <p>10 Q. Mostly same, okay.</p> <p>11 Would one of ordinary skill in the art</p> <p>12 between 1988 and 1992 think that the term</p> <p>13 "polyethylene" refers to low-density polyethylene</p> <p>14 or includes -- should I say includes low-density</p> <p>15 polyethylene?</p> <p>16 A. Yeah, it would.</p> <p>17 Q. It would? But not ultra high? Is that</p> <p>18 your opinion?</p> <p>19 A. Ah, they will also include ultra high,</p> <p>20 because there are different properties, so they</p> <p>21 will include also ultra high, as well as</p> <p>22 low-density.</p> <p>23 Q. Okay. I'd like to turn to polypropylene as</p> <p>24 used in the '446 patent, Exhibit 3 to your first</p> <p>25 report. Do you see the '446 patent?</p>	<p style="text-align: right;">296</p> <p>1 heterogenous braid."</p> <p>2 Do you see that?</p> <p>3 A. That is correct.</p> <p>4 Q. Ultra high molecular weight is a</p> <p>5 lubricating yarn, right?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. Then it says -- further down it</p> <p>8 says, "Such fiber forming polymers include</p> <p>9 perfluorinated polymers," and describes some of</p> <p>10 those, and then it says, "as well as</p> <p>11 non-perfluorinated polymers," and refers to</p> <p>12 polyethylene and PE, right?</p> <p>13 A. Right.</p> <p>14 Q. Okay. Ultra high molecular weight</p> <p>15 polyethylene came as fibers before 1992, right?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. Now, do you see where in the end it</p> <p>18 says, "The preferred polymers for the first set</p> <p>19 are PTFE, PETFE, FEP, PE and PP"?</p> <p>20 Do you see that?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. That's column 4, lines 28 to 31.</p> <p>23 Did you understand that sentence to refer</p> <p>24 to all types of polypropylene or just certain</p> <p>25 types of polypropylene?</p>
<p style="text-align: right;">295</p> <p>1 A. Yeah.</p> <p>2 Q. Exhibit 3?</p> <p>3 A. Exhibit 3.</p> <p>4 Q. Right.</p> <p>5 A. Yeah, I'm at this.</p> <p>6 Q. No, Exhibit 3. I'm sorry, that's Exhibit</p> <p>7 3. I'm sorry. Yeah, if you would go to column 4,</p> <p>8 please.</p> <p>9 A. Yeah.</p> <p>10 Q. Okay. Beginning at line 9 through 32, do</p> <p>11 you see that?</p> <p>12 A. Nine through 32, yeah.</p> <p>13 Q. Okay. That paragraph says, "Preferably,</p> <p>14 the continuous filaments which make up the first</p> <p>15 and second set of yarns are derived from</p> <p>16 nonabsorbable polymers."</p> <p>17 Do you see that?</p> <p>18 A. Yes.</p> <p>19 Q. Is ultra high molecular weight polyethylene</p> <p>20 a nonabsorbable polymer?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. Then it says, "In a preferred</p> <p>23 embodiment, the first set of yarns acts as</p> <p>24 lubricating yarns to improve the pliability, or</p> <p>25 compliance, and surface lubricity of the</p>	<p style="text-align: right;">297</p> <p>1 MR. TAMBURRO: Objection, vague.</p> <p>2 THE WITNESS: This is general purpose</p> <p>3 polyethylene, which it provides the lubricity and</p> <p>4 as well as pliability and compliance, not ultra</p> <p>5 high molecular weight polyethylene.</p> <p>6 BY MR. BONELLA:</p> <p>7 Q. Okay, that wasn't my question. Listen to</p> <p>8 the question.</p> <p>9 Did you understand that sentence to refer</p> <p>10 to all types of polypropylene?</p> <p>11 MR. TAMBURRO: Objection, vague.</p> <p>12 THE WITNESS: The fiber-forming</p> <p>13 polypropylene, yes.</p> <p>14 BY MR. BONELLA:</p> <p>15 Q. All types, okay.</p> <p>16 Did you understand -- do you see where it</p> <p>17 refers to PVDF?</p> <p>18 A. Yes.</p> <p>19 Q. Did you understand this paragraph to be</p> <p>20 referring to all types of polyvinylidene fluoride?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. Do you see where it refers to PTFE</p> <p>23 in that paragraph?</p> <p>24 A. Yes.</p> <p>25 Q. Did you understand it to be referring to</p>

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS  
Civil Action No. 04-12457 PBS

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DEPUY MITEK, INC., a Massachusetts Corporation,  
Plaintiff,  
v.  
ARTHREX, INC., a Delaware Corporation  
Defendant.

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Videotaped Deposition of DEBI PRASAD MUKHERJEE  
- VOLUME TWO -  
Washington, DC  
Wednesday, June 14, 2006

The videotaped deposition of DEBI PRASAD MUKHERJEE, Volume Two, was held on Wednesday, June 14, 2006, commencing at 9:12 a.m., at the offices of Dickstein Shapiro Morin & Oshinsky LLP, 2101 L Street, Northwest, Washington, DC, before Mary Ann Payonk, RDR, Certified Realtime Reporter, Registered Diplomate Reporter and Notary Public.



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1 Q But for known suture materials, the  
2 sterilization parameters for ethylene oxide are  
3 well-known to one of ordinary skill in the art?  
4 A For the suture that are currently used.  
5 But new suture like the ones described '446, there  
6 isn't, at least my opinion. One has to run the test  
7 to find out if there is or there isn't.  
8 Q Well, sterilization of -- of PET was  
9 known, right, in 1988, of PET for fibers for sutures  
10 was well-known with ethylene oxide, right?  
11 MR. TAMBURIO: Objection, vague.  
12 A Yes.  
13 BY MR. BONELLA:  
14 Q Okay. And sterilization procedures for  
15 PTFE were -- with sterile -- with ethylene oxide were  
16 well-known in 1988, right?  
17 MR. TAMBURIO: Objection, vague.  
18 A It's also known, yes, but it -- it is also  
19 known that PTFE properties are affected by gamma  
20 radiation.  
21 BY MR. BONELLA:  
22 Q But ethylene oxide was known in 1988 that  
23 they are --  
24 A Yes.  
25 Q -- generally substantially not affected?

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1 A Yes.  
2 MR. TAMBURIO: Objection, vague.  
3 BY MR. BONELLA:  
4 Q I'd like to turn to your rebuttal report,  
5 which is Exhibit 356. Page 18, you talk about the  
6 Harpell patents.  
7 A Yes.  
8 Q Did you consider in your analysis whether  
9 the Harpell patents disclose a coated suture?  
10 MR. TAMBURIO: Take your time to read the  
11 report if you need to.  
12 A To best of my recollection, it didn't.  
13 BY MR. BONELLA:  
14 Q Okay. Well, if the Harpell patents did  
15 describe coated sutures, would that change your  
16 opinion?  
17 A Yeah.  
18 Q Why?  
19 A Because was refer -- I mean, the coating  
20 is an issue, whether coating does or does not change  
21 properties of this material.  
22 MR. BONELLA: Okay. I'd like to ask you  
23 about some other issues. Let's take a quick break. I  
24 need to organize myself.  
25 THE VIDEOGRAPHER: You're now going off

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1 the video record at 12:01 p.m.  
2 (A recess was taken from 12:02 p.m.  
3 through 12:14 p.m.)  
4 THE VIDEOGRAPHER: We're now back on the  
5 video record. The time is 12:14 p.m.  
6 BY MR. BONELLA:  
7 Q Dr. Mukherjee, did the three reports that  
8 you provided in this case contain all the opinions  
9 that you have in this case?  
10 A At this moment, yes.  
11 Q Okay. Have you been asked to develop any  
12 other opinions?  
13 A No.  
14 Q Okay. Are you an expert in the area of  
15 suture design?  
16 MR. TAMBURIO: Objection, vague.  
17 A Yes.  
18 BY MR. BONELLA:  
19 Q And what -- what's your basis for saying  
20 that?  
21 A I work in suture industry more than 13  
22 years.  
23 Q Okay. And when -- you stopped working in  
24 the suture industry in the '80s?  
25 A '87.

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1 Q Okay. And are you still expert in the  
2 area of suture design today?  
3 MR. TAMBURIO: Objection, vague.  
4 A Yes.  
5 BY MR. BONELLA:  
6 Q Even though you haven't worked in the  
7 industry?  
8 A But I have worked on projects involving  
9 sutures in LSU.  
10 Q Okay. Going back to sterilization for a  
11 minute, the Cohen reference, remember Cohen?  
12 A Yes.  
13 Q Does Cohen describe how to sterilize the  
14 suture that he made?  
15 A Yes, he did.  
16 Q In the -- in the document? So would -- so  
17 would --  
18 MR. TAMBURIO: If you need to review it,  
19 review it.  
20 BY MR. BONELLA:  
21 Q So is that a sterilization for an -- the  
22 ultra high molecular weight polyethylene monofilament  
23 suture that he described?  
24 A That was one of -- let me look at that.  
25 Q Excuse me?

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1 MR. TAMBURRO: Objection, vague.  
 2 A Enough information for a scanning  
 3 microscopy is not very conclusive. They may or may  
 4 not be.  
 5 BY MR. BONELLA:  
 6 Q You don't know?  
 7 A I don't know.  
 8 Q Okay. Does the coating on FiberWire  
 9 prevent the PET yarns and the PTFE yarns from each  
 10 providing their individual properties to FiberWire?  
 11 MR. TAMBURRO: Objection, vague.  
 12 THE WITNESS: Now please correct me.  
 13 MR. TAMBURRO: And -- and -- and -- and --  
 14 THE WITNESS: FiberWire does not contain a  
 15 PTFE.  
 16 BY MR. BONELLA:  
 17 Q Oh, I'm sorry. Did I misspeak?  
 18 A You just said that.  
 19 Q I'm sorry.  
 20 Does the coating on FiberWire prevent the  
 21 PET fibers, PET or ultra high molecular weight  
 22 polyethylene fibers from providing contribution to  
 23 FiberWire's properties?  
 24 MR. TAMBURRO: Objection, vague.  
 25 A No.

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1 BY MR. BONELLA:  
 2 Q Okay. I'd like to go to your first  
 3 report, invalidity, Exhibit 239. If we go to tab --  
 4 tab 9 --  
 5 A Tab 9.  
 6 Q There's an excerpt from Dr. Steckel's  
 7 report.  
 8 A Right.  
 9 Q It's only a -- a one-page excerpt from his  
 10 laboratory notebook.  
 11 A Yes.  
 12 Q Okay. Did you select that one page to put  
 13 in your report out of his entire notebook, or were you  
 14 given that one page?  
 15 A No, I have the entire notebook.  
 16 Q Okay. Why'd you pick -- did you consider  
 17 the remainder of his notebook when -- when you select  
 18 that individual page to attach to your report?  
 19 MR. TAMBURRO: Objection. Well, not an  
 20 objection, but if you need -- to the extent you need  
 21 to read the context of why you cited this, please do  
 22 so.  
 23 A Because it is very clear that he was  
 24 talking about difficulties in core popping and braid  
 25 looseness.

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1 BY MR. BONELLA:  
 2 Q Okay. Do you know what samples on that  
 3 page he was talking about, when -- when they were  
 4 made?  
 5 A Well, according to the lab, his notebook  
 6 page signed was date of '89 -- I mean '89.  
 7 Q Right.  
 8 A That's what it says here.  
 9 Q Okay. Do you know when those samples were  
 10 made that are discussed on that page?  
 11 A It's February 2, 1989 at the top. That's  
 12 when the lab entry is.  
 13 Q Okay.  
 14 A I assume that's when the samples were  
 15 made.  
 16 Q Okay. I'd like you to turn to Exhibit 26  
 17 to Exhibit 359, the report of Dr. Matthew Hermes,  
 18 which contains a larger excerpt of Dr. Steckel's  
 19 report right here. And if I could draw your attention  
 20 to page DMI002617, okay?  
 21 A Right here.  
 22 Q Right here. 17. Okay --  
 23 A 1617.  
 24 Q Here's an entry on DMI002617 is June 6,  
 25 1988?

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1 A That's correct.  
 2 Q Okay. And if you look at the next page,  
 3 shows a chart of samples, composite braid evaluation,  
 4 braid constructions. Do you see that?  
 5 A Yes.  
 6 Q Did you consider that, those  
 7 constructions?  
 8 MR. TAMBURRO: Take your time,  
 9 Dr. Mukherjee.  
 10 A I believe I did.  
 11 BY MR. BONELLA:  
 12 Q Okay. CBE15, do you see CBE15 sample?  
 13 A Yeah.  
 14 Q Do you know what the construction of that  
 15 sample was?  
 16 MR. TAMBURRO: Objection, vague.  
 17 A Was PTFE, 11049 in the denier and the  
 18 fiber. This column on these other things are not  
 19 there.  
 20 BY MR. BONELLA:  
 21 Q Do you know what the construction of CB15  
 22 was?  
 23 MR. TAMBURRO: Objection, vague.  
 24 A If I understood, you are asking the --  
 25 BY MR. BONELLA: